

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

429P0483

## SENATE JUDICIARY ENGROSSED NO. **SB 123** - 1/28/2008

Introduced by: Senators Albers, Abdallah, Hansen (Tom), Hundstad, Kloucek, Koetzle, Lintz, Maher, McCracken, Schmidt (Dennis), and Smidt (Orville) and Representatives Vanneman, Boomgarden, Bradford, Brunner, Hackl, Halverson, Hills, Juhnke, Koistinen, Lucas, McLaughlin, Moore, Pederson (Gordon), Pitts, Steele, Thompson, Tidemann, Turbiville, and Vehle

1 FOR AN ACT ENTITLED, An Act to provide for certain requirements for the sale and  
2 purchase of nonferrous metal property and to establish certain penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "Industrial or commercial account," any person or business, including a scrap metal  
6 business, operating from a fixed location, that sells nonferrous metal to a scrap metal  
7 recycler pursuant to a contractual arrangement or agreement;
- 8 (2) "Law enforcement officer," any law enforcement officer as defined in § 23-3-7;
- 9 (3) "Nonferrous metal property," any metal property for which the value of the metal  
10 property is derived from the property's content of copper, brass, aluminum, bronze,  
11 lead, zinc, platinum, rhodium, palladium, or nickel, or any of their alloys. Aluminum  
12 does not include any food or beverage containers, except for a beer keg;
- 13 (4) "Record," a paper, electronic, or other method of storing information;



1       (5)    "Scrap metal business," any scrap metal supplier, scrap metal recycling center, or  
2            scrap metal processor;

3       (6)    "Transaction," a pledge to buy, the purchase of, or the trade for any nonferrous metal  
4            property by a scrap metal business from any person. A transaction does not include  
5            a sale or trade involving any industrial or commercial account.

6       Section 2. Each scrap metal business shall keep records of each transaction involving the  
7       purchase of nonferrous metal property that exceeds fifty dollars. The scrap metal business shall  
8       be able to produce an accurate and legible record of each transaction involving nonferrous metal  
9       property at the location where the scrap metal is purchased. The records shall contain the  
10      following information:

11      (1)    Time, date, location, and value of the transaction;

12      (2)    Signature of the person selling the nonferrous metal property;

13      (3)    Name, street address, city, state, and telephone number of the seller;

14      (4)    Current drivers license number or other government issued picture identification card  
15            number of the seller or, if no number is available, a copy of the seller's government  
16            issued picture identification card;

17      (5)    A description of the predominant types of nonferrous metal property involved in the  
18            transaction, including the weight, quantity, or volume of the scrap nonferrous metal;  
19            and

20      (6)    Name of the employee representing the scrap metal business in the transaction.

21      Section 3. Any person selling any nonferrous metal property to a scrap metal business shall  
22      sign a declaration. The declaration shall be included as part of the transactional record required  
23      by section 2 of this Act or on the receipt for the transaction kept by the scrap metal business.  
24      The declaration shall include the following statement: "I, the undersigned, affirm under penalty

1 of law that the property that is subject to this transaction is not to the best of my knowledge  
2 stolen property."

3 An employee of the scrap metal business shall witness the signing and dating of the  
4 declaration before the transaction may be consummated.

5 Section 4. The record and declaration required by this Act shall be open to the inspection  
6 of any law enforcement officer at all times during the ordinary hours of business or at reasonable  
7 times if ordinary hours of business are not kept. The record and declaration shall be maintained  
8 at the location that the business is conducted for one year following the date of the transaction.

9 Section 5. If a copy of the record of the transaction is requested by a law enforcement  
10 officer, a scrap metal business shall furnish a full, true, and correct transcript of the record from  
11 the purchase or receipt of the nonferrous metal property. This record shall be provided or  
12 transmitted to the applicable law enforcement agency within two business days.

13 If the scrap metal business has good cause to believe that any nonferrous metal property in  
14 the business's possession is lost or stolen, the scrap metal business shall promptly report that fact  
15 to a law enforcement officer, together with the name of the owner, if known, and the date of  
16 transaction and the name of the person from whom it was received.

17 Section 6. If the scrap metal business is notified by a law enforcement officer that an item  
18 of nonferrous metal property has been reported as stolen, a scrap metal business shall hold that  
19 property intact and safe from alteration, damage, or commingling, and shall place an identifying  
20 tag or other suitable identification on the property. The scrap metal business shall hold the  
21 property for a period of time as directed by the law enforcement agency up to a maximum of ten  
22 business days.

23 A law enforcement officer may not place on hold any item of nonferrous metal property  
24 unless that law enforcement agency reasonably suspects that the property is a lost or stolen item.

Any hold that is placed on the nonferrous metal property shall be removed within ten business days. If the property on hold is determined not to be lost or stolen, the nonferrous metal property shall be returned to the owner or released.

Section 7. Any person who:

(1) Deliberately removes, alters, or obliterates any manufacturer's make, model, or serial number, personal identification number, or identifying mark engraved or etched upon any nonferrous metal property in order to deceive a scrap metal business is guilty of a Class 1 misdemeanor;

(2) Enters into a transaction to purchase or receive any nonferrous metal property where the manufacturer's make, model, or serial number, personal identification number, or identifying mark engraved or etched upon the property has been deliberately and conspicuously removed, altered, or obliterated is guilty of a Class 1 misdemeanor;

(3) Knowingly makes, causes, or allows to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept pursuant to this Act is guilty of a Class 1 misdemeanor; or

(4) Signs the declaration required pursuant to this section 3 of this Act knowing that the nonferrous metal property subject to the transaction is stolen is guilty of a Class 1 misdemeanor. The signature of a person on the declaration required pursuant to section 3 of this Act constitutes evidence of intent to defraud a scrap metal business if that person is found to have known that the nonferrous metal property subject to the transaction was stolen.